

Appl. No. 10/625,125
Amdt. Dated March 25, 2005
Reply to Office Action of December 3, 2004

Attorney Docket No. 81815.0049
Customer No.: 26021

REMARKS/ARGUMENTS:

Amendments to the specification are made. Two new figures are added. Support for the amendments to the specification and two new figures can be found at p. 15 of the Applicant's specification, in the paragraph beginning at line 1. Claim 9 is amended. Claims 9-11 are pending in the application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

The present invention relates to a so-called vertical pillow type packaging system with an improved flow of articles to be packaged. (Applicant's specification, at p. 1, lines 5-6).

PRIORITY:

The Office states that the Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120. The Office further states that in order to receive such benefit either a specific reference to the prior application(s) must be inserted in the first sentence of the specification or in an application data sheet. In response, Applicant inserted a reference to prior applications in the first sentence of the specification. The benefit of an earlier filing date under 35 U.S.C. 120 is thus respectfully requested.

DOUBLE PATENTING:

Claim 9 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,460,312. In response, the Applicant files concurrently herewith a terminal disclaimer in compliance with 37 C.F.R. 1.321(c), disclaiming the terminal part of a patent granted on this application, which would extend beyond the expiration date

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Amendments to the Drawings:

The attached sheets of drawings includes new Figures 9 and 10.

Attachment: Two New Sheets of Drawings

of the full statutory term of U.S. Patent No. 6,460,312, as presently shortened by any terminal disclaimer. Withdrawal of the rejection is thus respectfully requested.

DRAWINGS:

The Office objects to the drawings under 37 CFR 1.83(a) stating that the "bite detecting means" and a flow chart showing the operation of the system using "the bite detecting means for detecting the presence or absence of articles being bit into the sealed portion" must be shown or features canceled from claim 9.

In response, the Applicant is submitting Figures 9 and 10. According to the amended specification and new Figure 9, the bite detecting means according to the present invention comprises (1) a detector 29 for detecting the variation in a distance between the sealing jaws such as the encoder and (2) a comparator 32 to make a comparison between the variation and the standard value obtained by the blank test 31. Figure 9 corresponds to Figure 3 of Japanese Laid-Open Patent Publication No. 7-187153 and Figure 5 of U.S. Patent No. 5,551,206. U.S. Patent No. 5,551,206 corresponds to Japanese Laid-Open Patent Publication No. 7-187153, which is referred to at p. 15 of the Applicant's specification, in the paragraph beginning at line 1. This paragraph was amended in a preliminary amendment submitted concurrently with the filing of the application. Furthermore, Japanese Laid-Open Patent Publication No. 7-187153 is referred to in U.S. Patent No. 6,460,312 (Application No. 09/545,281) at column 8, line 59. The present application is a continuation of Application No. 09/545,281. Figure 10 is a flow chart showing the operation of the system using the bite detecting means for detecting the presence or absence of articles being bit into the sealed portion. Text describing Figures 9 and 10 was inserted at p. 5, line 21 and at p. 16, line 8 of the Applicant's specification.

In view of the foregoing, the Applicant respectfully submits that the drawings are in compliance with 37 CFR 1.83(a). Withdrawal of this objection is thus respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112:

Claim 9 stands rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which it is most nearly connected, to make and/or use the invention. Applicant respectfully traverses this rejection.

The Office states that the specification fails to disclose and/or teach what the “bite detecting means” comprises and how such means operates to detect the presence or absence of articles being bit into the sealed portion. In response, the Applicant amended the specification to include a description of what the “bite detecting means” comprises and how such means operates to detect the presence or absence of articles being bit into the sealed portion. In addition, new Figure 9 further clarifies what the “bite detecting means” comprises.

The Office further states that the specification fails to disclose the embodiment that the determination means determine the state of flow of the articles based on the presence or absence of articles being bit into the sealed portion. In response, the Applicant amended the specification to include a description of how the determination means determine the state of flow of the articles based on the presence or absence of articles being bit into the sealed portion.

In view of the foregoing, Applicant respectfully submits that claim 9 satisfies the enablement requirement under 35 U.S.C. § 112, first paragraph. Withdrawal of this rejection is thus respectfully requested.

Claims 9-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection.

The Office states that "a bite detecting means" in claim 9 lacks sufficient description. In response, as discussed above, the Applicant amended the specification and included Figure 9 in order to clarify the meaning of "a bite detecting means".

The Office states that the phrase "the sealed portion" in claim 9 lacks proper antecedent basis and it is unclear as to what exactly the sealed portion is supposed to be. In response, the Applicant changed "the sealed portion" to --a sealed portion-- in claim 9. In addition, the specification as amended, includes further description as to the meaning of "a sealed portion".

The Office states that the phrase "articles being bit into the sealed portion" is not understood. In response, the specification as amended, includes a description as to what is meant by "articles being bit into the sealed portion".

In view of the foregoing, Applicant respectfully submits that claims 9-11 are not indefinite under 35 U.S.C. § 112, second paragraph. Withdrawal of this rejection is thus respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

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If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 337-6809 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

Date: March 25, 2005

By: 

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